

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U39E)
for Approval of Amendments to Qualifying Facility Power
Purchase Agreement With Thermal Energy Development
Partnership, L.P.

Application 11-12-003
(Filed December 8, 2011)

**DECISION GRANTING COMPENSATION TO ROBERT SARVEY
FOR SUBSTANTIAL CONTRIBUTION TO DECISION 12-10-005**

Claimant: Robert Sarvey	For contribution to D.12-10-005
Claimed (\$): 4,458.65¹	Awarded (\$): 3,696.30 (17% reduction)
Assigned Commissioner: Florio	Assigned ALJ: Melissa K. Semcer

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision:	D.12-10-005 granted in part and denied in part Pacific Gas and Electric Company's (PG&E) application seeking Commission approval of two amendments to an existing Qualifying Facility Standard Offer Power Purchase Agreement between PG&E and Thermal Energy Development Partnership, L.P. (Thermal Energy) for operation of Thermal Energy's biomass facility located in Tracy, California. The Energy Price Amendment was approved as proposed with an effective date of September 1, 2011; the Firm Capacity Amendment was denied.
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¹ Sarvey's original compensation request claimed \$4,392.70; however, a tally of the requested claim revealed a total of \$4,458.65

B. Claimant must satisfy intervenor compensation requirements set forth in Public Utilities Code §§ 1801-1812:

	Claimant	CPUC Verified
Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):		
1. Date of Prehearing Conference:	Feb. 1, 2012	Correct
2. Other Specified Date for NOI:		Correct
3. Date NOI Filed:	Mar. 1, 2012	Correct
4. Was the NOI timely filed?		Yes
Showing of customer or customer-related status (§ 1802(b)):		
5. Based on ALJ ruling issued in proceeding number:	A.11-12-003	Correct
6. Date of ALJ ruling:	April 6, 2012	Correct
7. Based on another CPUC determination (specify):		N/A
8. Has the Claimant demonstrated customer or customer-related status?		Yes
Showing of “significant financial hardship” (§ 1802(g)):		
9. Based on ALJ ruling issued in proceeding number:	A.11-12-003	Correct
10. Date of ALJ ruling:	May 31, 2013	Correct
11. Based on another CPUC determination (specify):		N/A
12. Has the Claimant demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision:	D.12-10-005	Correct
14. Date of Issuance of Final Order or Decision:	Oct. 11, 2012	Incorrect: Actual Issuance Date Oct 17, 2012
15. File date of compensation request:		This item was left blank by Claimant. Claimant filed compensation request on Dec. 3, 2012
16. Was the request for compensation timely?		Yes

PART II: SUBSTANTIAL CONTRIBUTION**A. Claimant's claimed contribution to the final decision:**

Contribution	Specific References to Claimant's Presentations and to Decision	Showing Accepted by CPUC
1. Demonstrated that the Facility is aging and better priced alternatives may exist in the future	We do acknowledge Sarvey's argument that the Facility is aging and better priced alternatives may exist in the future. (Decision Page 10) (Sarvey Opening Brief pages 1,5)	Yes
2. Demonstrated that the firm Capacity amendment is not cost effective.	We agree with Sarvey and find that the Firm Capacity Amendment is not cost effective. (Decision Page 10)	Yes
3. The facility is not needed to meet PG&E's RPS Requirements in later years.	We do acknowledge Sarvey's argument that the Facility may not be necessary in the long-term as a resource to achieve PG&E's RPS compliance obligation. (Decision Page 16) (Sarvey Opening Brief Page 8) (Sarvey Reply Brief Page 5)	Yes
4. The additional 5 MW of capacity is not needed to meet PG&E's RPS goals.	The additional capacity, on the other hand, does not provide any value towards PG&E RPS goals, which are measured solely based upon energy output. (Decision page 16) (Sarvey Opening brief page 8)	Yes
5. Better alternatives exist and an RFO should be held for additional Generation.	If PG&E and Thermal Energy wish to pursue the additional five MW of capacity, PG&E should consider putting forth the additional capacity in a competitive solicitation process where the incremental capacity can be more readily evaluated against other proposed projects. (Decision Page 16) (Sarvey Opening Brief Page 5,8)	Yes

6. The commission has previously allowed the price amendment to be paid from the date of execution of the contract in Resolution E-4412, E-4427, and E- 4455.	Sarvey notes in his opening brief, the Commission has previously approved a number of biomass QF amendments that allowed the price to be paid from the date of contract execution.12 (Decision Page 21 and footnote 13). (Sarvey Opening Brief Page 9)	Yes
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B. Duplication of Effort (§§ 1801.3(f) & 1802.5):

	Claimant	CPUC Verified
a. Was the Division of Ratepayer Advocates (DRA) a party to the proceeding?	No	Verified
b. Were there other parties to the proceeding with positions similar to yours?	No	Verified
c. If so, provide name of other parties:		Verified
d. Describe how you coordinated with DRA and other parties to avoid duplication or how your participation supplemented, complemented, or contributed to that of another party:		

PART III: REASONABLENESS OF REQUESTED COMPENSATION**A. General Claim of Reasonableness (§§ 1801 & 1806):**

a. Concise explanation as to how the cost of Claimant's participation bears a reasonable relationship with benefits realized through participation (include references to record, where appropriate) My claim for \$4,392.70 is small compared to the money saved by ratepayers because the 5 MW Firm Capacity amendment was denied as I advocated.	CPUC Verified <hr/> Verified
b. Reasonableness of Hours Claimed. I did not charge any time for issues where the Commission did not adopt my position.	See discussion on disallowances below. Request verified but not adopted.

c. Allocation of Hours by Issue	
<p>1) Are the Amendments in the best interest of Pacific Gas and Electric Company's (PG&E's) ratepayers? (380 Minutes 23%)</p> <p>2) Are the Amendments cost-effective? (625 Minutes 37 %)</p> <p>3) Are the Amendments necessary to enable Thermal Energy to continue to generate and sell to PG&E Renewable Portfolio Standard (RPS)-eligible power from its biomass facility? (50 Minutes 2%)</p> <p>4) Is the Thermal Energy Facility needed to meet PG&E's RPS portfolio requirements and are the Amendments consistent with the RPS resource needs identified in PG&E's 2011 RPS Procurement Plan? (155 Minutes 10%)</p> <p>5) Were the Amendments presented to PG&E's Procurement Review Group (PRG) as required by D.02-08-071? 0%</p> <p>6) If approved should the Amendments be effective September 1, 2011, or should the Amendments become effective upon final Commission approval? 0%</p> <p>7) Is the DTS adequate-Viability of continued operation of the Tracy Biomass Plant and its affect on DTS? (45 Minutes 2%)</p> <p>8) Does PG&E's renewable portfolio comply with Executive Order S-06-06? 0%</p> <p>9) All (445 minutes 26%)</p>	<p>Sarvey requests 0 minutes for Issue 8; however, his detailed hours show 15 minutes directed toward this issue. This issue also appeared throughout Sarvey's opening brief.</p>

B. Specific Claim:

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
R. Sarvey	2011	0.5	\$155	D.11-01-024	\$77.50	0.5	\$155	\$ 77.50
R. Sarvey	2012	27.83	\$155	D.11-01-024	\$4,313.65	22.18	\$ 160	\$ 3,548.80
	Subtotal:				\$4,391.15	Subtotal:		\$ 3,626.30
OTHER FEES								
Describe here what OTHER HOURLY FEES you are Claiming (paralegal, travel **, etc.):								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
	Subtotal:					Subtotal:		

INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
Michael Boyd	2012	1	\$135	D.11-01-024	\$ 67.50	1	\$ 140	\$70.00
	Subtotal:					Subtotal:		\$70.00
COSTS								
#	Item	Detail			Amount	Amount		
					\$			
Subtotal:					\$	Subtotal:		\$
TOTAL REQUEST \$:					\$4,458.65	TOTAL AWARD \$:		\$ 3,696.30
<p>*We remind all intervenors that Commission staff may audit their records related to the award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Claimant’s records should identify specific issues for which it seeks compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants and any other costs for which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.</p>								
<p>**Travel and Reasonable Claim preparation time typically compensated at ½ of preparer’s normal hourly rate</p>								

C. The Green Power Institute's Comments and Attachments on Part III:

Attachment or Comment #	Description/Comment
Attachment #1	Certificate of Service

D. Adoptions/Adjustments to Hourly Rate

1. Increase in 2012 hourly rates.	Mr. Sarvey's increased 2012 hourly rate is due to the Commission approved Cost-of-Living Adjustment [COLA] adopted by Resolution ALJ-281. Abiding by the Resolution, Mr. Sarvey's 2012 hourly rates have been raised to reflect the 2.2% COLA for intervenor hourly rates. The same increase has been applied to Mr. Boyd's 2012 rate.
2. CPUC's acceptance of R. Sarvey's hourly rate	R. Sarvey's hourly rate is verified as set forth in D.11-01-024.
3. CPUC's acceptance of M. Boyd's hourly rate	M. Boyd's hourly rate is verified as set forth in D.11-01-024

E. CPUC Disallowances & Adjustments:

#	Reason
1. Hours related to S.06-06	On Feb. 24, 2012, Sarvey requests payment for 15 minutes spent in review of Executive Order S-06-06. Sarvey's arguments pertaining to Executive Order were rejected and Sarvey's arguments did not make a substantial contribution to the final decision. See D.12-10-005 at 16. Further hours attributed to Executive Order S-06-06 contained in the Opening Brief are discussed below.
2. Opening and Reply Brief	In this request for compensation, Sarvey states that the reasonableness of his hours rests upon the fact that he did not charge for hours where the Commission did not adopt his position. However, Sarvey requests compensation broken down by each page of his opening and reply briefs, many of which primarily address arguments pertaining to the energy amendment; all of Sarvey's arguments pertaining to the energy amendment were rejected in D.12-10-005. There is no way to verify that the time allotted pertains only to issues of the firm capacity contract. Arguments were also rejected in regards to Executive Order S-06-06, which appear on multiple pages of Sarvey's opening brief. Furthermore, Sarvey, on multiple occasions, combines multiple tasks into one timesheet entry. For example, on Feb. 26, 2012, Sarvey lists 45 minutes spent on a review of PG&E 2011 RPS (Renewable Portfolio Standard) requirements for delivery term security and drafting page 6 opening brief. Combining multiple tasks into one timesheet entry is a violation of Rule 17.4 of the Commission's rules of Practice and Procedure. For the above reasons, it is impossible to conduct a line-item review of Sarvey's request in regards to his opening and reply briefs. Therefore, in an attempt to limit the amount of hours claimed that pertain to arguments ultimately rejected by the Commission, Sarvey's 2012 hours allocated to preparation of the opening brief and reply briefs are reduced by 35%. This results in a reduction of 5.4 hours from 930 minutes (15.5 hours) to 604.5 minutes (10.1 hours.)

PART IV: OPPOSITIONS AND COMMENTS

A. Opposition: Did any party oppose the Claim?	No
B. Comment Period: Was the 30-day comment period waived (<i>see</i> Rule 14.6(c)(6))?	Yes

FINDINGS OF FACT

1. Robert Sarvey has made a substantial contribution to Decision (D.) 12-10-005.

2. The requested hourly rates for Robert Sarvey and Michael Boyd (as adjusted herein) are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The claimed costs and expenses as adjusted herein are reasonable and commensurate with the work performed.
4. The total of reasonable contribution is \$ 3,696.30

CONCLUSION OF LAW

1. The Claim, with any adjustment set forth above satisfies all requirements of Public Utilities Code §§ 1801-1812.

ORDER

1. Robert Sarvey is awarded \$3,696.30
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company shall pay Robert Sarvey the total award. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning February 16, 2013 the 75th day after the filing of the claimant's request, and continuing until full payment is made.
3. The comment period for today's decision is waived.
4. This decision is effective today.

Dated _____, at San Francisco, California.

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:		Modifies Decision?	No
Contribution Decision(s):	D1210005		
Proceeding(s):	A1112003		
Author:	ALJ Melissa K. Semcer		
Payer(s):	Pacific Gas and Electric Company		

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Robert Sarvey	12/3/2012	\$4,392.70	\$3,696.30	No	Resolution ALJ-281; multiple tasks in one line-item, attribution of hours to positions rejected in the final decision.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Robert	Sarvey	Expert	Robert Sarvey	\$155	2011	\$155
Robert	Sarvey	Expert	Robert Sarvey	\$155	2012	\$160
Michael	Boyd	Advocate	Robert Sarvey	\$135	2012	\$140

(END OF APPENDIX)